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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/081,928
Filing Date: February 20, 2002
Appellant(s): HICKS, ISREAL

Mark D. Byrne
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 8, 2008 appealing from the Office action mailed 5/29/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

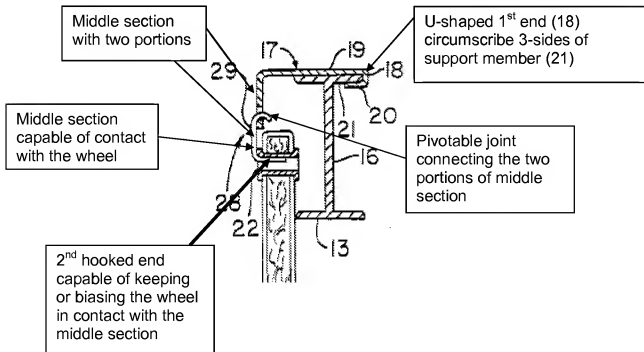
5,816,016	ZARNICK	10-1998
WO 00/55031	STARLING ET AL	9-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 26, 29, 30, 48, 50, 51, 53-55, 57, 58, and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Zarnick (US patent no. 5,816,016). Zarnick discloses a hanger (capable of being a tire hanger) made of rigid material comprising a device configured to removably engage a horizontal support member (21), the device having 1st U-shaped end (18) circumscribing the horizontal member with a hook and a second hook configuration (see illustration below) capable of suspending wheel in vertical orientation (see orientation of element 24); and a middle section (29) with pivotable joint formed from overlapping parts having a length suitable for engaging the hook configuration with the wheel wherein the weight bearing upon the second end is conveyed through the middle section to the first end to secure the first end on the horizontal support.



Claims 58 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Starling et al (WO 00/55031). Starling discloses a tire hanger (120, figure 4) comprising a hoist wrap section (128) having open end (between the outer pair bolts 136 are opened spaces) arranged to be removably engage with at least three sides (such as adjacent 130, 132, inner pair of bolts 136 which form three sides) of a horizontal support member (26, figure 5) of a vehicle hoist (22, figure 5); a tire hanging section (154) arranged to engage a wheel; and a middle section (150, 156, figure 4) disposed between the hoist wrap section and the tire hanging section, whereby the hoist wrap section is shaped so as to contact and slidably engage the three sides of the horizontal support member. Further, Starling's hoist wrap is inherently can be slidably positionable along the horizontal support member at a user-selected a location when the nuts are loosened; regarding claim 58 wherein the tire hanging section (154) is a straight member of sufficient length to hold a tire.

(10) Response to Argument

A. Claims 26, 29, 30, 48,50,51,53-55, 57, 58, and 60 are rejected under 35 USC 102 as being anticipated by Zarnick.

1. Reference relied upon for 102(b) rejection

Appellant's device is a tire hanger used in tire shops or garages for supporting a tire or wheel on a horizontal member of a vehicle hoist. The hanger has one end (22, figure 6) for mounting onto a horizontal member of a hoist and an opposite end having a hook configuration (39) for insertion into hole of a wheel and a middle section having a pivot joint (28, figure 6). The reference relied upon, Zarnick disclose all the claimed features as illustrated above. Zarnick does not show a vehicle hoist nor a tire; however, appellant's claimed invention is drawn to a hanger for a tire. For all of the claims on appeal, neither the horizontal hoist nor wheel is positively claimed in combination with the hanger. Rather they are functionally recited as an intended use. Zarnick's hanger is capable of performing such intended use.

2. Appellant argues that claims 26,29,30,48,50,51,53-55, 57, 58, and 60 were improperly rejected under 102(b) as being anticipated by the Zarnick reference for the reason that: **(a)** Zarnick does not show the claimed limitation "a first end arranged to be mounted by at least partially circumscribing the horizontal member without the need for fastener". For such claim limitation, Zarnick clearly demonstrates in figure 2 a first end (18) arranged to be mounted by at least partially circumscribing the horizontal member (16) without the need for fastener. Appellant's argument that Zarnick's hook clip of 1"-1.5" metal strip would be impossible to partially circumscribe the (vehicle hoist) horizontal support member as there are no vehicle hoist with a width of 1.5" and thickness of 0.09 inches or less (page 7 last paragraph of appeal brief). Such is irrelevant in so far as appellant's claimed invention does not recite any dimensions of a particular vehicle hoist. The vehicle hoist is an intended use in the claimed invention.

Furthermore, for the sake of argument, horizontal member of vehicle hoist may come in such sizes such as from children's toy area.

Appellant further argues that the hook end (19) of Zarnick faces toward the I-beam, whereas appellant's hook end faces away from the car hoist beam. Such argument is irrelevant for such limitation is not found in any of the claims.

(b) Appellant further argues that Zarnick does not disclose the "second end having a hook configuration to engage a wheel". For such claimed limitation, Zarnick clearly shows hook (29, figure 2 Zarnick) having a bent portion inserted into the grommet (22, figure 2 Zarnick) being cylinder or wheel shaped. Appellant argues that "Zarnick's second end is capable of engaging only those wheels with a width no more than 1.06" " (Page 8, third paragraph) and that appellant is not aware of any vehicle wheel meeting the dimensions required for use with Zarnick's device. Applicant's functional language of intended use of the hanger for use with a wheel is met by Zarnick. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As stated by applicant Zarnick is capable of engaging wheels. The size of the wheels is irrelevant as it is not part of the claimed invention. Again, for the sake of argument, wheel sizes vary and smaller sizes can be found in children's toy car.

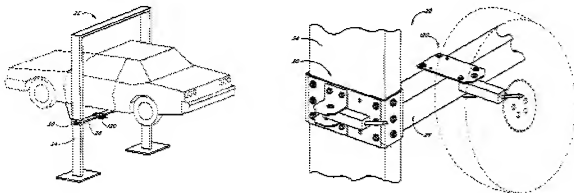
(c) Appellant argues that Zarnick does not disclose "a middle section disposed between the first end and the second end....having a suitable length for engaging the

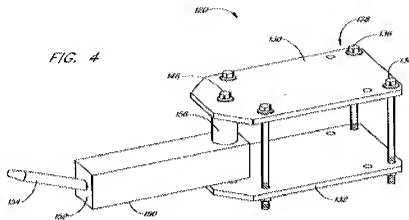
hook configuration with a wheel". Again, appellant argues the dimensions of Zarnick is "completely unsuitable for engaging the hook configuration with a wheel" (page 9 of appeal brief, paragraph 3). Again, examiner disagrees. Zarnick's middle section is capable of engaging a wheel, and a wheel that is at least the same size as the grommet as demonstrated and such wheel may exist in children's toy for example.

B. Claims 58 and 60 are rejected under 35 USC 102 as being anticipated by Starling et al.

1. Reference relied upon for 102(b) rejection

PCT publication document no. WO 00/55031 to Starling et al demonstrates a tire hanger mounted on a vehicle hoist which is in the same field of endeavor as appellant's invention as shown below for convenience.





a. Appellant argues that Starling does not show "a hoist wrap section having an open end arranged to removably engage with at least three sides of a horizontal member of a vehicle hoist" as recited in claims 58 and 60. For such limitation, Starling clearly shows a hoist wrap section (128) having open end (between the outer pair bolts 136 are opened spaces) arranged to be removably engage with at least three sides (such as adjacent 130, 132, inner pair of bolts 136 which form three sides) of a horizontal support member (26, figure 5) of a vehicle hoist (22, figure 5); a tire hanging section (154) arranged to engage a wheel. Appellant argues that there is no "open end" of Starling's hoist wrap as required in appellant's claims 58 and 60. Examiner disagrees. Appellant's claim 58 recites "a hoist wrap section having an open end arranged to removably engage with at least three sides of a horizontal member of a vehicle hoist". Starling's hoist wrap (128, figure 4) clearly is opened end. Indeed, the spaces between the plates (130 and 132) and bolts (136) makes end 128 open ended.

Appellant argues that Starling fail to show engaging the axle hole of a tire/wheel assembly but instead Starling shows the hanger pin (154) engages with "mounting hole

of tire/wheel assembly" (page 5, lines 18-20 of Starling). Such argument is irrelevant as such limitation of "engaging an axle hole of a wheel" is not found in the claims 58 nor 60. Furthermore, the wheel and hoist are of intended use recitation. Nevertheless, Starling's apparatus clearly shows tire hanger mounted on a vehicle hoist with a hanger pin (154) engaging the hole of the wheel. For the sake of argument, Starling's pin (154) is definitely capable of mounting through the axle hole of a wheel.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Korie Chan/
Primary Examiner
Art Unit 3632

Conferees:

Meredith Petravick /mcp/

Anita King /amk/